THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO.4307 OF 1999

DATED 01-02-2006

Between:

R.Malleswar Rao, s/o R.Nagaiah,
Aged about 53 years, R/o Sainagar,
Tukaram Gate,
Secunderabad

....Petitioner

And

The Chief Security Commissioner,
Railway Protection Force,
South Central Railway,
Rail Nilayam, Secunderabad
and another.

.....Respondents

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

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ORDER:

In this writ petition, the petitioner has questioned the punishment of withholding increment for a period of six months with cumulative effect, and, treating the suspension period as suspension vide proceedings No.B/XP.227/153/95/2 (D.O.No.97/95), dated 30-6-1995 of the second respondent, as confirmed by the first respondent vide proceedings No.X/P.X/P.227/158/98-08 (FO No.136/1998),

dated 20-7-1998.

The petitioner is working as Sub-Inspector in Railway Protection Force. On the ground that there was negligence in discharge of his duties, which would amount to misconduct, disciplinary proceedings were initiated and the petitioner was issued charge sheet dated 24-3-1995 by framing the following charges:

(i) That he has issued an improper movement order to the escort party on 08-03-1995 to escort the accused in Cr.No.3/95 of OGL post;

(ii) That he has failed to ensure proper escorting of the accused in Cr.No.3/95 of OGL post thereby accused one K.Kiran Kumar escaped from the lawful custody of the escort party; and

(iii) *That he has not properly interrogated the accused in Cr.No.3/95 of OGL post in order to save the Inspector/Ongole who instructed him orally to send escort of two staff members only instead of 3 and above as per rules.*

Enquiry officer was appointed and the Enquiry Officer, after conducting necessary enquiry, submitted a report to the second respondent recording a finding that all the charges leveled against the petitioner were proved. The petitioner submitted his explanation to the show cause notice issued by the disciplinary authority. On considering the enquiry report and the explanation offered by the petitioner, final order dated 30-06-1995 was passed, imposing punishment of withholding increment for a period of six months with cumulative effect and treating the period of

suspension from 14-03-1995 to 20-04-1995 as suspension only. As against the said order of the second respondent, the petitioner preferred an appeal to the first respondent who by proceedings dated 20-07-1998 confirmed the orders passed by the second respondent. Aggrieved by the punishment inflicted by the disciplinary authority, as confirmed by the first respondent, this Writ Petition is filed.

It is submitted by the learned counsel appearing for the petitioner, that the department has issued several instructions by way of circulars in 1985 and 1987 to the effect, that in cases where the procedure for imposing major penalty is followed in disciplinary proceedings and if it finally ends in imposing minor penalty, suspension period should be reckoned as on duty for all the attendant benefits; and, such a benefit was extended to many other similar persons, and, there is no reason to discriminate the petitioner. In support of his contention, the learned counsel for the petitioner has placed reliance on the judgment of this Court in *P.Purnachandra Rao v. Senior Security Commissioner, RPF*[1].

On the other hand, it is submitted by the learned Standing Counsel appearing for the respondent – Railway Protection Force, that after conducting necessary enquiry, final orders are passed, imposing punishment of stoppage of increment for a period of six months, and, treating the period as suspension, and further the same is also confirmed by the revisional authority. In that view of the matter, there are no grounds to interfere with the said proceedings in this writ petition.

The learned counsel for the petitioner has produced circular instructions issued by the Chief Personal Officer of the Railways dated 28-01-1987, wherein instructions were issued clarifying, that in cases, where departmental proceedings are initiated against the suspended employee, for imposition of major penalty, and, if it finally ends in imposition of minor penalty, suspension should be reckoned as on duty and wages be paid. Apart from the said circular, in the judgment relied on by the learned Counsel for the petitioner, in the case of *P.Purnachandra Rao* (1) supra, following observations are made:

> "So far as the period of suspension is concerned the Department of Personnel and Training, Government of India had issued letter dated 03-12-1985 dealing with the situation, where disciplinary proceedings for imposition of major penalty are initiated against an employee, but the disciplinary authority, ultimately imposes only a minor penalty. The Department had directed that in such a situation, the period of suspension shall be treated as on duty. The respondents have applied the said letter, to the cases relating to their employees and after invoking it, have regularized the period of suspension where minor penalty was imposed. The petitioner had placed before this court three such proceedings whereunder, similar course of action was adopted. There does not appear to be any reason as to why the same shall not be applied to the present case".

In the present case of the petitioner also, though procedure is followed, which is required to be followed for imposing major penalty, but however, punishment of stoppage of increment was imposed for a period of six months with cumulative effect and the period of suspension was treated as suspension which is a minor penalty. In similar such situation also, this Court has granted

relief to treat the said suspension period as on duty for all the benefits except for payment of wages. Further in this case the disciplinary authority had passed final order on 30-6-1995, the petitioner himself approached the first respondent during 1997-98, and this writ petition was filed in the year 1999. In the case of *P.Purnachandra Rao (*1 supra), the Supreme Court held that the delayed approach of an employee to a Court, by itself, does not defeat the remedy or right. It was further observed at the most, such an employee may be denied the benefit of back wages, if he was otherwise entitle for the remedy. Having regard to the penalty imposed, the petitioner is entitle to the benefit of circular instructions to the extent of treating the period of suspension as on duty for all the service benefits. In that view of the matter, and, having regard to the facts and circumstances of the case, the order of the second respondent dated 30-06-1995 passed in proceedings No.B/XP.227/153/95/2 (D.O.No.97/95) as confirmed by the first respondent by his order dated 20-07-1998 to the extent of treating the period of suspension from 14-3-1995 to 20-4-1995 as suspension is set aside. It is made clear that the period during which the petitioner was placed under suspension shall be treated as on duty and the same shall be reckoned for all the attendant benefits including pension etc. However, the petitioner is not entitle to any monetary benefit in the form of back-wages.

As no other ground is urged, the Writ Petition is allowed to the extent indicated above. No order as to costs.

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JUSTICE R.SUBHASH REDDY

Date 01-02-2006.

Lrkm/Msnr..

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[1] 2003(3) ALT 747